

EXXON CORP.

IBLA 82-706

Decided May 26, 1983

Appeal from decision of the Alaska State Office, Bureau of Land Management, rejecting high bids for tract 33 and tract 34 in competitive oil and gas lease sale No. 821. AA 46614 and AA 46615.

Set aside and remanded.

1. Oil and Gas Leases: Competitive Leases--Oil and Gas Leases:
Discretion to Lease

The Secretary of the Interior has the discretionary authority to reject a high bid in a competitive oil and gas lease sale where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate. The explanation provided must inform the bidder of the factual basis of the decision and must be sufficient for the Board to determine the correctness of the decision if disputed on appeal.

2. Oil and Gas Leases: Competitive Leases--Oil and Gas Leases:
Discretion to Lease

Where the high bid in a competitive oil and gas lease sale is rejected as inadequate, and on appeal the bidder raises considerable doubt whether the bid is, in fact, inadequate, and the record fails to disclose a sufficient factual basis for the conclusion of inadequacy, the decision rejecting the bid will be set aside and the case remanded to BLM for reconsideration of the bid.

APPEARANCES: C. W. Culver, Esq., Houston, Texas, for appellant.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Exxon Corporation has appealed the decision dated March 4, 1982, of the Alaska State Office, Bureau of Land Management (BLM), rejecting its high bids

of \$35.09 per acre for tract 33 and \$36.20 per acre for tract 34 in competitive oil and gas sale No. 821 held on January 27, 1982, for lands in the National Petroleum Reserve. BLM found the bid to be inadequate.

The March 4, 1982, BLM decision provided:

At Competitive Oil and Gas Lease Sale No. 821 held on January 27, 1982 you were declared the high bidder for the following Tract(s):

<u>Tract(s) No.</u>	<u>Land Description</u>	<u>Amount of Bid Deposit</u>
33	Umiat Meridian, Alaska	\$240,200.00
	T. 4 N., R. 20 W., All.	
	T. 5 N., R. 20 W.,	
	Secs. 19 to 36, inclusive.	
34	T. 4 N., R. 21 W., All;	\$206,200.00
	T. 5 N., R. 21 W.,	
	Secs. 22 to 27, inclusive,	
	Secs. 34 to 36, inclusive.	

The Deputy Manager, Onshore Resource Evaluation, Alaska Region, Minerals Management Service (MMS), Anchorage, Alaska, recommended rejection of your bid(s) because of inadequacy based on their evaluations. MMS concluded that your bid(s) does not represent fair market value. The Bureau of Land Management (BLM), cross validated the MMS recommendation in several ways before concurring in the decision to reject.

First, BLM compared the aggregate results of the first NPR-A sale to the aggregate results of the first Prudhoe Bay sale to determine whether the average value received by the Federal government was appropriate for a sale in a frontier area where oil had yet to be discovered. The first Prudhoe Bay Sale, held in 1965 before oil was discovered, netted the State of Alaska an average of \$48.00 (in 1982 dollars). The first NPR-A sale, held in 1982 before private industry had an opportunity to find oil there, netted the Federal government an average of \$87.45 (in 1982 dollars). Thus, the NPR-A first sale results are about what one would expect for an unexplored area. As BLM was satisfied that the government was being fairly compensated at the aggregate level, the remaining question was whether the tract-by-tract evaluation and bid acceptance process was assuring the receipt, by the Federal government, of a fair payment for each tract. BLM was satisfied that the government was being fairly compensated for the entire sale. The remaining question was whether some tracts had attracted anomalously low bids. The BLM cross validated the MMS tract-by-tract evaluation and bid acceptance recommendation by using the pattern of industry bidding to determine which industry bids did not fit the general pattern of

the market. This "goodness of fit" approach provides the decision maker with information on whether the high bid for any given tract fits the general pattern of industry bidding. On the basis of this goodness of fit test the BLM identified tracts which did not appear to get the general pattern of industry bidding and which were judged by BLM to be anomalously low bids. The four tracts which MMS recommended that BLM reject the high bids matched the anomalously low bid tracts which BLM had identified. The BLM was, therefore, satisfied that MMS had done an evaluation which guaranteed the government receipt of fair market value for the entire sale and had correctly identified tracts which should have the high bid rejected. The BLM thus concurred with MMS and decided to reject the high bids on tracts 14, 33, 34 and 48. [1/]

A memorandum dated March 4, 1982, from the Director of the Alaska State Office, BLM, to the Director, BLM, concerning the adequacy of bids for NPR-A sale 821, stated:

Our analysis of the adequacy of bids received for NPR-A Sale 821 indicates that the high bids on four of the tracts were insufficient. We recommend rejection of the high bids on tracts 14, 33, 34 and 48 as the high bids on these tracts fall below the Current Expected Value (MROV), the Delayed Expected Value (DRV) and the Average Tract Value (AEOT). The Minerals Management Service concurs with this recommendation. The relationship between the amount of the high bids and the MROV, DRV AND AEOT values is shown below.

<u>Tract</u>	<u>High Bid</u>	<u>%MROV</u>	<u>%DRV</u>	<u>%AEOT</u>
*	*	*	*	*
33	\$1,201,000.00	19.98	29.80	44.65
34	1,081,000.00 [sic]	29.69	46.13	N/A <u>1/</u>
*	*	*	*	*

1/ Only one bid was received and, therefore, it would be inappropriate to calculate AEOT.

The Authorized Officer recommended that the high bids be accepted on all the remaining tracts where MMS concluded the high bids did, in fact, constitute the return of fair market value for

1/ Fifty-nine tracts were offered at the January sale. Bids were received on only 29 tracts. Twenty-five bids were accepted; 4 rejected. In the announcement of sale BLM established a minimum bid value of \$25 per acre. The per acre values of the rejected bids were \$25.10, \$35.09, \$36.20, and \$53 for tracts 14, 33, 34, and 48, respectively.

the grant of leases (IBLA 76-62). My approval of the Authorized Officer's recommendations constitutes the final Bureau action in this matter. [2/]

An undated memorandum from MMS to the State Director, BLM, regarding recommendations on high bids received, stated that MMS, Alaska Region, reviewed the high bids and geological and economic parameters and assumptions used in the derivation of resource economic values for each of the tracts receiving bids in the Sale No. 821, and that MMS recommended acceptance of 25 of the high bids received and rejection of 4 of the high bids received. The subject tracts were recommended for rejection.

Under "Factors Considered" the memorandum provided as follows:

MMS, Alaska Region, recommendations for acceptance or rejection of bids received in NPR-A are based on presale and postsale tract valuations. However, we do not feel that rigid adherence to a single criterion is in accordance with the stated objectives of leasing within NPR-A, one of which is the encouragement of timely exploration and development. Therefore, we have considered a number of other factors in assessing the adequacy of bids. These factors include the following:

1. Geological and economic uncertainty, which are the primary components of risk analysis, have a very large effect on calculated resource economic value. We have demonstrated the effect of very small changes in geologic risk to your staff during one of our presale meetings. Almost all of the tracts offered in Sale No. 821 are burdened with a moderately high to extremely high degree of uncertainty. Small variations in subjective judgments of geologic data reliability by equally qualified analysts have tremendous effects on the values of high risk tracts.

2/ Accompanying that memorandum is a copy of a chart styled "High Bid and CEV/DEV Matrix." DEV stands for "delayed expected value." CEV, or current expected value, is calculated for the bid acceptance decision by MMS. Note 1 of the chart states in part:

"MMS defines CEV as 'not (being) the market value of the oil and gas eventually discovered or produced, but the value of the right to explore, and, if there is a discovery, develop and produce' the lease. In a very real sense a firm which acquires a lease is in the same position as an individual who buys a sweepstakes ticket. There is only a very small chance at a big payoff, while there is a large chance that the ticket (or lease) is in fact going to represent a net cash drain."

The chart listed the high bid for tract 33 as \$1,201,000 and for tract 34 as \$1,031,000. Both the CEV and DEV for these tracts were withheld. Note 2 of the chart explained "[v]alue withheld to avoid prejudicing the government's position at possible reoffering sales."

2. It is in the best interest of the Government, as well as the bidder, to acquire additional subsurface geological and geophysical information, particularly in the relatively unexplored western and southern parts of the NPR-A. In this light, the loss of revenue to the Government in accepting serious bids which fall short of the Government's estimate of value should be considered relative to the immense cost of the Government's own exploration program in recent years.

3. Substantial bids, even though they fall short of our calculated values for certain tracts, are considered as evidence of a serious commitment on the part of the bidders to actively pursue exploration of these tracts within the primary term of the lease.

4. Additional components of uncertainty, not considered in the MMS evaluation, are the lack of provisions for lease extensions due to shut-in production and/or unitization. This lack of assurance of lease extensions beyond the primary term undoubtedly has affected the bidder's estimates of present worth of tracts, particularly those in the more remote parts of NPR-A.

Rationale for Recommendations

1. We recommend acceptance of high bids on the following tracts because the bid values exceed the MMS calculated statistical mean range of values (MROV):

Tract 82103	Tract 82129
Tract 82104	Tract 82135
Tract 82106	Tract 82137
Tract 82108	Tract 82142
Tract 82112	Tract 82153
Tract 82113	Tract 82154
Tract 82115	Tract 82156
Tract 82116	Tract 82157

2. We recommend acceptance of high bids on the following tracts because the bid values exceed the MMS calculated delayed statistical mean range of values (DMROV):

Tract 82118 Tract 82136 Tract 82145 Tract 82146 Tract 82150

3. We recommend acceptance of high bids on the following tracts on the basis of the applicable factors discussed above:

Tract 82131 Factor 1 High risk
 Factor 2 Incentive for exploration
 Factor 3 Serious bid
 Factor 4 Lease extension problem

Tract 82132 Factor 1 High risk
 Factor 2 Incentive for exploration
 Factor 4 Lease extension problem

Tract 82149 Factor 2 Incentive for exploration
 Factor 3 Serious bid
 Factor 4 Lease extension problem

Tract 82158 Factor 1 High risk
 Factor 2 Incentive for exploration
 Factor 3 Serious bid
 Factor 4 Lease extension problem

This memorandum recommended rejection of four bids including those for tracts 33 and 34 because "they fall below the MMS calculated DMROV and because most of the bid values suggest only speculative interest in these tracts."

In the statement of reasons, appellant contends that its bids for tracts 33 and 34 represented fair market value and that the decision fails to identify the criteria used to evaluate the bids. With the statement of reasons, appellant has submitted the affidavit of Dr. Edward W. Erickson, a professor of economics with 20 years experience in the analysis of the economics of the petroleum industry. Appellant also has provided a 45-page analysis of the lease sale prepared by Erickson (Exh. B to the affidavit). Referring to the portion of the undated MMS memorandum entitled "Rationale for Recommendations," the affidavit states:

Of the 8 accepted high bids which were less than MMS calculated CEV's [current expected values], 4 were accepted because the high bid values exceeded the MMS calculated delayed statistical mean range of values [DMROV]. The other 4 were accepted for a variety of reasons including: "high risk," "incentive for exploration," "serious bid," and "lease extension problem." The factor of "serious bid" was cited for 3 of these latter 4 tracts. In their rejection letter, the BLM refers to the "pattern of industry bidding," bids which "did not fit the general pattern of the market," and "anomalously low bids." The 4 rejected bids were characterized by the MMS as suggesting only "speculative interest" in these tracts.

None of these quoted terms are defined by either the MMS or the BLM. Their specific meaning in the context of the Sale No. 821 accept/reject decisions is not obvious. Nor have the factors which determine MMS estimates of CEV's been revealed.

(Erickson Affidavit at 7, 8). As a result of his studies, Erickson also concluded that MMS' estimates of CEV's were not consistent with the general pattern of the market and therefore not useful in identifying anomalously low bids. He opined that MMS' recommendations to reject high bids on certain

tracts appeared to be more the product of random chance effects in MMS' evaluating CEV's rather than any deviation of high bids from fair market value.

Appellant points out that no explanation is given as to why the application of the four factors justified the acceptance of four "below DMROV" bids but not of its bids on tracts 33 and 34. Appellant states:

Whereas Factors 2 and 4 apply "across the board" to all leases offered in NPR-A Lease Sale No. 821, these factors do not appear to have been taken into consideration by the MMS in recommending the rejection of Exxon's high bids. In view of the fact that Tracts 32, 33 and 34 appear to overlie the same structure, the acceptance of Exxon's bid of \$26.58 per acre on Tract 32, and the rejection of Exxon's bids on Tracts 33 and 34 of \$35.09 and \$36.20, respectively, cannot be explained in terms of "high-risk" considerations included in Factor 1. Finally, there appears to be no rational basis for the MMS labelling bids of \$1,117,459.80 (Tract 31), \$1,452,000.00 (Tract 49) and \$1,125,000.00 (Tract 58) "Serious Bids" while denying this same designation to, and labelling as "suggest[ing] only speculative interest", Exxon's bids of \$1,201,000.00 for Tract 33 and \$1,031,000.00 for Tract 34. (Statement of Reasons at 14).

[1] The Secretary of the Interior has the discretionary authority to reject a high bid in a competitive oil and gas lease sale as inadequate. 30 U.S.C. § 226(b) (1976); 43 CFR 3120.3-1. This Board has consistently upheld that authority so long as there is a rational basis for the conclusion that the highest bid does not represent a fair market value for the parcel. Snyder Oil Co., 69 IBLA 259, 260 (1982), and cases cited therein. Departmental policy in the administration of its competitive lease program is to seek the return of fair market value for the grant of leases, and the Secretary reserves the right to reject a bid which will not provide a fair return. M. Robert Paglee, 68 IBLA 231, 233 (1982), and cases cited therein.

MMS was the Secretary's technical expert in matters concerning geologic evaluation of tracts of land offered at a sale of competitive oil and gas leases and the Secretary is entitled to rely on MMS' reasoned analysis. L. B. Blake, 67 IBLA 103 (1982). When BLM relies on that analysis in rejecting a bid as inadequate, it must ensure that a reasoned explanation is provided for the record to support the decision. Southern Union Exploration Co., 41 IBLA 81, 83 (1979). Otherwise, if the bid is not clearly spurious or unreasonable on its face, the Board has consistently held that the

3/ On Dec. 3, 1982, the Secretary of the Interior issued Secretarial Order No. 3087 transferring all onshore minerals management functions of MMS, not relating to royalty management, to BLM. Notice of the transfer of functions was published in the Federal Register on Mar. 2, 1983. 48 FR 8982.

decision must be set aside and the case remanded for compilation of a more complete record and readjudication of the acceptability of the bid. M. Robert Paglee, *supra* at 234, and cases cited therein. The Board has stated the rationale for this as follows:

[T]he appellant is entitled to a reasoned and factual explanation for the rejection of its bid. Appellant must be given some basis for understanding and accepting the rejection or alternatively appealing and disputing it before this Board. The explanation provided must be a part of the public record and must be adequate so that this Board can determine its correctness if disputed on appeal. Steven and Mary J. Lutz, 39 IBLA 386 (1979); Basil W. Reagel, 34 IBLA 29 (1978); Yates Petroleum Corp., 32 IBLA 196 (1977); Frances J. Richmond, 24 IBLA 303 (1976); Arkla Exploration Co., 22 IBLA 92 (1975).

Southern Union Exploration Co., 51 IBLA 89, 92 (1980).

[2] The case before us involves the same oil and gas lease sale, BLM decision, and the same supporting MMS documents as Amoco Production Co., 71 IBLA 241 (1983), in which rejection of the high bid for tract 48 was challenged. We find, as we did in Amoco, that the documents of record do not enable us to determine the correctness of BLM's decision to reject appellant's bids on tracts 33 and 34. Both bids exceeded the minimum bid (\$25 per acre) established for the sale. Appellant's arguments and the analysis of its expert point out serious deficiencies in MMS' rationale for accepting/rejecting bids. Although bids for certain tracts were accepted because they met three or four of the factors outlined in the MMS memorandum, there was no attempt to set forth how these factors figured in the rejection of the bids on tracts 33 and 34. Nor is any operative definition of these factors given. In any event, it is apparent that these factors were not consistently or uniformly applied in determining whether to reject or accept bids. ^{4/}

^{4/} With certain limited exceptions, any party who is adversely affected by a decision of an officer of BLM or an administrative Law Judge may appeal to this Board. If an appeal is timely made, upon receipt the file is assigned a docket number and an Administrative Judge is assigned to the case. Cases are generally considered in turn and the Administrative Judge makes an in depth study of the facts as found in the file, the pleadings filed by the parties and the law as it applies to the facts and pleadings. After the above-described analysis the Board finds that the decision in this case should be set aside and remanded, as the file does not contain sufficient facts to determine if there is a rational basis for the conclusion reached.

If the above paragraph were used as our decision we would be justly criticized. It merely described the method by which this Board reached its determination but does not disclose the facts upon which this Board relied, what law was applied, or why the Board reached its determination. The notice that the bid submitted by appellant was rejected by BLM gave only an explanation of the method BLM used to make its determination. Appellant applied the same method and came to an opposite conclusion. We have no way of determining that there was a rational basis for BLM's determination based upon the record in this case.

Moreover, the dollars per acre bid for tracts 33 and 34 exceeded the dollars per acre bid for three of the eight tracts for which high bids were accepted but which were less than the CEV per acre. The decision does not explain why the lands on tracts 33 and 34 were "anomalously" low within the general pattern of the market or BLM's "goodness of fit" test. The decision is also deficient in that it failed to advise appellant of the presale evaluations of tracts 33 and 34 or the estimated fair market value and the factual data on which these evaluations are based. Where an appellant has submitted a bid which is not clearly spurious and BLM has failed to provide the estimated minimum value for the tract in question, the appellant may assert its right to such information, and unless there is a legal prohibition, BLM must provide that valuation and the factual data on which it was based. Southern Union Exploration Co., 51 IBLA at 95; see Snyder Oil Co., supra at 261.

This does not mean the Board will substitute its own judgment for that of the Department's experts in determining what is fair market value for the tract, but rather that the Board will require sufficient facts and a sufficiently comprehensible analysis to insure that a rational basis for the determination is present. Accordingly, we remand this case to BLM for readjudication of appellant's bids. In readjudicating the bid BLM should consider the arguments and analysis presented by appellant in this appeal. If the bids are rejected again, BLM shall set forth the reasons for doing so completely, including the presale evaluation, so they may be addressed by appellant and considered by the Board in event of an appeal. Snyder Oil Co., supra at 261.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Alaska State Office is set aside and the case remanded for further action consistent with this opinion.

R. W. Mullen
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Bruce R. Harris
Administrative Judge

October 31, 1983

IBLA 82-706 : AA 46614 and AA 46615
73 IBLA 176 :
: Oil and Gas
EXXON CORP. :

ERRATUM

In the above-captioned decision, the sentence:

The Secretary of the Interior has the discretionary authority to reject a high bid in a competitive oil and gas lease sale as inadequate. 30 U.S.C. § 226(b)(1976); 43 CFR 3120.3-1.

found at 73 IBLA page 182, is revised to read:

The Secretary of the Interior has the discretionary authority to reject as inadequate a high bid in a competitive oil and gas lease sale in the National Petroleum Reserve--Alaska. 42 U.S.C. § 6508 (Supp.V 1981); 43 CFR 3132.5(b).

R. W. Mullen
Administrative Judge

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73 IBLA 184A

